

REMARKS

The Examiner rejected claims 1-16 under 35 U.S.C. 102(e) as being anticipated by Maxwell (U.S. Patent Application Publication 20040148229 A1). The rejection is respectfully disagreed with and is traversed below.

Claim 1 claims "a monitor for monitoring the on-line use of the application". In the Office Action, at page 3, line 5, the Examiner cites Maxwell at paragraph [0039]page as allegedly teaching this feature.

Paragraph [0038] of Maxwell states:

[0038] The service provider database 104b can include, for example, an SQL database server to store various types of information including, for example, end user information, vendor information, software application information, credit card information, coupon records and information, etc. The web server 104a, for example, automatically tracks device and name changes for the end users to detect improper use of such information, provides an online software store accessible by the end users, maintains a record of software purchases made by the end users, etc.

The only aspect of this that could potentially apply to this feature of the subject application's claims is that which reads: "The web server 104a, for example, automatically tracks device and name changes for the end users to detect improper use of such information." This automatic tracking by the web server is a far cry from "a monitor for monitoring the on-line use of [an] application."

The subject application is directed, at least in part, to monitoring on-line use of the application as the payment or pricing plan may thus impact, based on whether or not the user has sufficient credit available or remaining, whether or not the user may currently use the application on-line. However, the cited portion of Maxwell speaks to "automatically track[ing] device and name changes." Such minor tracking cannot be considered remotely equivalent to the type of "monitor

for monitoring the on-line use of the application” which the subject application claims. The features recited in claim 1 are not disclosed or suggested in the cited art. Maxwell certainly does not “anticipate” all of the features recited in claim 1. Therefore, claim 1 is patentable and should be allowed.

Though dependent claims 2-7 contain their own allowable subject matter, these claims should at least be allowable due to their dependence from allowable claim 1. However, to expedite prosecution at this time, no further comment will be made except as noted below.

Independent claims 8, 9, 10, 13 and 15 claim a similar feature as claim 1 noted above, including monitoring the on-line use of the application in method some of the method claims and a computer executable program code configured to enable the network entity to monitor on-line use of the application in the computer program product and memory media claims. For the same reasons stated above with respect to claim 1, independent claims 8, 9, 10, 13 and 15 are not “anticipated” by Maxwell or obvious in view of Maxwell. Therefore, claims 8, 9, 10, 13 and 15 are patentable and should be allowed.

Paragraphs [0168]-[0171] of Maxwell states:

[0168] The online software purchase system 100 can store information relating to various processes described herein. This information can be stored in one or more memories, such as a hard disk, optical disk, magneto-optical disk, RAM, etc., of the devices of the online software purchase system 100. One or more databases of the devices and subsystems of the online software purchase system 100 can store the information used to implement the embodiments of the present invention. The databases can be organized using data structures (e.g., records, tables, arrays, fields, graphs, trees, and/or lists) included in one or more memories, such as the memories listed above or any of the storage devices listed below in the discussion of FIG. 4, for example.

[0169] The previously described processes can include appropriate data structures for storing data collected and/or generated by the processes of the online software purchase system 100 in one or more databases thereof. Such data structures accordingly can include fields for storing such collected and/or generated data. In a database management system, data can be stored in one or more data

containers, each container including records, and the data within each record can be organized into one or more fields. In relational database systems, the data containers can be referred to as tables, the records can be referred to as rows, and the fields can be referred to as columns. In object-oriented databases, the data containers can be referred to as object classes, the records can be referred to as objects, and the fields can be referred to as attributes. Other database architectures can be employed and use other terminology. Systems that implement the embodiments of the present invention are not limited to any particular type of data container or database architecture.

[0170] All or a portion of the online software purchase system 100 (e.g., as described with respect to FIGS. 1-3) can be conveniently implemented using one or more conventional general purpose computer systems, microprocessors, digital signal processors, micro-controllers, etc., programmed according to the teachings of the embodiments of the present invention (e.g., using the computer system of FIG. 4), as will be appreciated by those skilled in the computer and software art(s). Appropriate software can be readily prepared by programmers of ordinary skill based on the teachings of the present disclosure, as will be appreciated by those skilled in the software art. Further, the system 100 can be implemented on the World Wide Web (e.g., using the computer system of FIG. 4). In addition, the online software purchase system 100 (e.g., as described with respect to FIGS. 1-3) can be implemented by the preparation of application-specific integrated circuits or by interconnecting an appropriate network of conventional component circuits, as will be appreciated by those skilled in the electrical art(s).

[0171] FIG. 4 illustrates a computer system 400 upon which the described embodiments (e.g., the devices and subsystems of the online software purchase system 100) can be implemented. The various embodiments can be implemented on a single such computer system, or a collection of multiple such computer systems. The computer system 400 can include a bus 401 or other communication mechanism for communicating information, and a processor 403 coupled to the bus 401 for processing the information. The computer system 400 also can include a main memory 405, such as a random access memory (RAM), other dynamic storage device (e.g., dynamic RAM (DRAM), static RAM (SRAM), synchronous DRAM (SDRAM)), etc., coupled to the bus 401 for storing information and instructions to be executed by the processor 403.

No portion of the above-cited paragraphs appear to directly or indirectly speak to the monitoring feature of applicants' claimed invention. If the Examiner maintains the rejection of the claims based on this aspect, Applicants respectfully request that the Examiner more particularly identify the portion of Maxwell that allegedly speaks to the feature in question.

On page 3 of the Office Action, the Examiner cites Maxwell at paragraph [0052] as teaching "a controller configured to control the processor to provide the on-line use of the application dependent on the monitoring."

Maxwell at paragraph [0052] states:

[0052] Accordingly, the desktop client 206 starts by contacting, for example, the traffic controller 104c of the web server 104a. The traffic controller 104c then directs the desktop client 206 to one of the servers 104d that is least busy (e.g., performs load balancing). The desktop client 206 then communicates directly with the selected server. However, in case of a server failure, the desktop client 206 can again contact the traffic controller 104c to be directed to another server. The desktop client 206 then sends the updated and/or modified records, such as purchase and update requests, etc., stored on the PC 102a database 212 to the web server 104a.

Although Maxwell discusses a traffic controller 104c, this controller obviously functions to direct the desktop client 206 to an appropriate server 104d based on load balancing and/or availability. The traffic controller does *not* "a controller configured to control the processor to provide the on-line use of the application dependent on the monitoring," as claimed in claim 1. Paragraph [0052] of Maxwell clearly does not anticipate this feature of the subject application's invention. The features recited in claim 1 are not disclosed or suggested in the cited art. Maxwell certainly does not "anticipate" all of the features recited in claim 1. Therefore, claim 1 is patentable and should be allowed.

Independent claims 8, 9, 10, 13 and 15 claim a similar feature as claim 1 noted above, including controlling the providing of the on-line use of the application dependent on the monitoring (claim 8), a controller configured to control the processor to provide the on-line use of the application dependent on the monitoring (claim 9), controlling the providing of the on-line use of the application dependent on the monitoring of the on-line use of the application (claim 10), computer executable program code configured to enable the network entity to control the providing of the on-line use of the application dependent on the monitoring of the on-line use of

the application (claim 13), computer executable program code configured to enable the network entity to control the providing of the on-line use of the application dependent on the monitoring of the on-line use of the application (claim 15). For the same reasons stated above with respect to claim 1, independent claims 8, 9, 10, 13 and 15 are not "anticipated" by Maxwell nor obvious in view of Maxwell. Therefore, claims 8, 9, 10, 13 and 15 are patentable and should be allowed.

On page 3 of the Office Action, the Examiner cited Maxwell at paragraph [0070] as teaching claim 3. Claim 3 states:

A system according to claim 1, wherein the monitor has been configured to keep account of available on-line use of the application and to decrement the available on-line use according to predetermined reduction criterion.

Maxwell at paragraph [0070] states:

[0070] Partners can be specified for each product and get paid if a copy of that product is sold. This is most useful for situations, such as paying a royalty to a software developer or a technology licensor. For instance, Handmark distributes products developed by external programming houses and pays them a royalty. Using the Partners mechanism, the service provider can automatically pay the development team the agreed upon royalty. This royalty could be either a fixed amount or a percentage of the profits. Profits then are calculated as sales price minus all fees and other revenue shares. This could also be used to pay licensing fees for products with major brand names attached, such as the Zagat Restaurant Guide.

This portion of Maxwell discusses a royalty/licensing method. It does not speak to a "monitor," let alone one "configured to keep account of available on-line use of [an] application and to decrement the available on-line use according to predetermined reduction criterion." Clearly it cannot be seen as anticipating claim 3 of the subject application.

On page 4 of the Office Action, the Examiner cites Maxwell at paragraph [0175] as teaching claim 6. Claim 6 states:

A system according to claim 1, further comprising means for informing the user when the amount of available on-line use is falling below a certain threshold.

Maxwell at paragraph [0175] states:

[0175] The computer system 400 also can include a display controller 417 coupled to the bus 401 to control a display 419, such as a cathode ray tube (CRT), liquid crystal display (LCD), active matrix display, plasma display, touch display, etc., for displaying or conveying information to a computer user. The computer system can include input devices, such as a keyboard 421 including alphanumeric and other keys and a pointing device 423, for interacting with a computer user and providing information to the processor 403. The pointing device 423 can include, for example, a mouse, a trackball, a pointing stick, etc., or voice recognition processor, etc., for communicating direction information and command selections to the processor 403 and for controlling cursor movement on the display 419. In addition, a printer can provide printed listings of the data structures/information of the system shown in FIG. 1, or any other data stored and/or generated by the computer system 400.

Although this portion of Maxwell mentions a display controller 417, a display 419, and an optional printer, there is no disclosure or suggestion of "means for informing the user when the amount of available on-line use is falling below a certain threshold" as claimed in claim 6. Though the three items mentioned above with respect to Maxwell serve to provide information to the user, there is no provision specifying that any such information relate to on-line use. Nor is any means provided to allow the information to reflect that the "available on-line use is falling below a certain threshold." Clearly this portion of Maxwell does not anticipate claim 6.

On page 4 of the Office Action, the Examiner cites Maxwell at paragraph [0063] as teaching claim 7. Claim 7 states:

A system according to claim 1, wherein the service provider unit further comprises means for determining a payment of a supplementary charge and increasing by a corresponding amount the available on-line use.

Paragraph [0063] of Maxwell states:

[0063] Foreign currency support: The plug-in 204 automatically detects the country settings of the end user's computing devices 102. Optionally, software applications 202 can offer localized pricing. In this case, the vendor simply specifies the localized prices at the web server 104a and these are downloaded to the end user's computing devices 102 from the web server 104a. Advantageously, this allows the software vendors to offer lower prices in less prosperous countries.

Here, Maxwell discusses supporting foreign currencies. Nothing in paragraph [0063] of Maxwell discloses or suggests "means for determining a payment of a supplementary charge and increasing by a corresponding amount the available on-line use" As claimed in claim 7. Clearly the quoted paragraph does not anticipate claim 7.

In the present Office Action, the Examiner did not identify any specific portions of Maxwell with regards to anticipating claims 8-12. The Applicants respectfully request that, should the Examiner maintain the rejection of these claims based on Maxwell, further information and specific citations be provided. Based on the present Office Action, Applicants respectfully disagree with the Examiner's blanket assertion that Maxwell anticipates claims 8-12.

On page 4 of the Office Action, the Examiner cites Maxwell at paragraphs [0171]-[0176] as teaching the feature of claims 13-16 regarding "computer executable program code configured to enable the network entity to store an application usable by the client both off-line and on-line."

Maxwell at paragraphs [0171]-[0176] recites:

[0171] FIG. 4 illustrates a computer system 400 upon which the described embodiments (e.g., the devices and subsystems of the online software purchase system 100) can be implemented. The various embodiments can be implemented on a single such computer system, or a collection of multiple such computer systems. The computer system 400 can include a bus 401 or other communication mechanism for communicating information, and a processor 403 coupled to the bus 401 for processing the information. The computer system 400 also can include a main memory 405, such as a random access memory (RAM), other dynamic storage device (e.g., dynamic RAM (DRAM), static RAM (SRAM), synchronous DRAM (SDRAM)), etc., coupled to the bus 401 for storing

information and instructions to be executed by the processor 403.

[0172] In addition, the main memory 405 also can be used for storing temporary variables or other intermediate information during the execution of instructions by the processor 403. The computer system 400 further can include a ROM 407 or other static storage device (e.g., programmable ROM (PROM), erasable PROM (EPROM), electrically erasable PROM (EEPROM), etc.) coupled to the bus 401 for storing static information and instructions.

[0173] The computer system 400 also can include a disk controller 409 coupled to the bus 401 to control one or more storage devices for storing information and instructions, such as a magnetic hard disk 411, and a removable media drive 413 (e.g., floppy disk drive, read-only compact disc drive, read/write compact disc drive, compact disc jukebox, tape drive, and removable magneto-optical drive). The storage devices can be added to the computer system 400 using an appropriate device interface (e.g., small computer system interface (SCSI), integrated device electronics (IDE), enhanced-IDE (E-IDE), direct memory access (DMA), or ultra-DMA).

[0174] The computer system 400 also can include special purpose logic devices 415, such as application specific integrated circuits (ASICs), full custom chips, configurable logic devices (e.g., simple programmable logic devices (SPLDs), complex programmable logic devices (CPLDs), field programmable gate arrays (FPGAs), etc.), etc., for performing special processing functions, such as signal processing, image processing, speech processing, voice recognition, communications functions, etc.

[0175] The computer system 400 also can include a display controller 417 coupled to the bus 401 to control a display 419, such as a cathode ray tube (CRT), liquid crystal display (LCD), active matrix display, plasma display, touch display, etc., for displaying or conveying information to a computer user. The computer system can include input devices, such as a keyboard 421 including alphanumeric and other keys and a pointing device 423, for interacting with a computer user and providing information to the processor 403. The pointing device 423 can include, for example, a mouse, a trackball, a pointing stick, etc., or voice recognition processor, etc., for communicating direction information and command selections to the processor 403 and for controlling cursor movement on the display 419. In addition, a printer can provide printed listings of the data structures/information of the system shown in FIG. 1, or any other data stored and/or generated by the computer system 400.

[0176] The computer system 400 can perform a portion or all of the processing steps of the invention in response to the processor 403 executing one or more sequences of one or more instructions contained in a memory, such as the main

memory 405. Such instructions can be read into the main memory 405 from another computer readable medium, such as the hard disk 411 or the removable media drive 413. Execution of the arrangement of instructions contained in the main memory 405 causes the processor 403 to perform the process steps described herein. One or more processors in a multi-processing arrangement also can be employed to execute the sequences of instructions contained in the main memory 405. In alternative embodiments, hard-wired circuitry can be used in place of or in combination with software instructions. Thus, embodiments are not limited to any specific combination of hardware circuitry and/or software.

Nothing in the above-quoted paragraphs actually speaks to "computer executable program code," let alone "computer executable program code configured to enable the network entity to store an application usable by the client both off-line and on-line" (claims 13 and 15), "computer executable program code configured to enable the wireless client to communicate with the service provider unit to request for an application from the service provider unit and to receive the application from the service provider unit" (claims 14 and 16). Clearly the cited portions of Maxwell do not anticipate these features of claims 13-16.

On page 5 of the Office Action, the Examiner cites Maxwell at paragraphs [0183]-[0188] as teaching the feature of claims 13-16 regarding "computer executable program code configured to enable the network entity to provide on-line use of the application for the client."

Maxwell at paragraphs [0183]-[0188] states:

[0183] Various forms of computer-readable media can be involved in providing instructions to a processor for execution. For example, the instructions for carrying out at least part of the embodiments of the present invention can initially be borne on a magnetic disk of a remote computer connected to either of the networks 429 and 433. In such a scenario, the remote computer can load the instructions into main memory and send the instructions, for example, over a telephone line using a modem. A modem of a local computer system can receive the data on the telephone line and use an infrared transmitter to convert the data to an infrared signal and transmit the infrared signal to a portable computing device, such as a PDA, a laptop, an Internet appliance, etc. An infrared detector on the portable computing device can receive the information and instructions borne by the infrared signal and place the data on a bus. The bus can convey the data to main memory, from which a processor retrieves and executes the

instructions. The instructions received by main memory can optionally be stored on storage device either before or after execution by processor.

[0184] Advantageously, the described embodiments provide numerous end-user benefits, for example:

[0185] Simplified purchasing: The user can purchase software applications while standing in line at the grocery store, while on an airplane, etc.

[0186] Key repository: The user does not have to worry about losing software registration keys, because when the user reinstalls software that has already been purchased, the software keys are provided automatically.

[0187] Update notification: The user receives a notification of software product updates directly in the purchased software application.

[0188] Single point of contact for name or address changes: User information changes are automatically sent to the vendors of purchased software applications.

Nothing in the above-quoted paragraphs of Maxwell speaks to "on-line use of the application," let alone "computer executable program code configured to enable the network entity to provide on-line use of the application for the client." Clearly this portion of Maxwell does not anticipate this feature of claims 13-16.

In discussing the rejection of claims 14 and 16, the Examiner failed to identify any portion of Maxwell that teaches "computer executable program code configured to enable the wireless client to run the application off-line whenever desired by the user and on-line when desired by the user if allowed by the remote service provider unit."

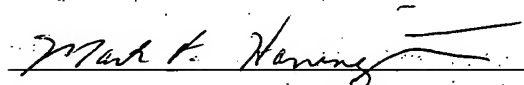
The Examiner is respectfully reminded that for a rejection to be made on the basis of anticipation, it is well recognized that "to constitute an anticipation, all material elements recited in a claim must be found in one unit of prior art", Ex Parte Gould, BPAI, 6 USPQ 2d, 1680, 1682 (1987), citing with approval In re Marshall, 578 F.2d 301, 304, 198 USPQ 344, 346 (CCPA 1978). Based on the foregoing, the disclosures of Maxwell clearly do not anticipate these claims, as not all material elements of these claims can be found.

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The features of all the claims (claims 1-16) do not appear to be disclosed or suggested in the cited art. For example, claim 11 claims a processor for off-line running the application whenever desired by the user and for on-line running the application when desired by the user if allowed by the remote service provider unit; claim 12 claims off-line running the application whenever desired by the user; and on-line running the application when desired by the user if allowed by the remote service provider unit. These features are not disclosed or suggested in the cited art. Therefore, the examiner is requested to reconsider his rejection.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issue remain, the examiner is invited to call applicant's attorney at the telephone number indicated below.

Respectfully submitted,



Mark F. Harrington (Reg. No. 31,686)

2/7/06
Date

Customer No.: 29683
Harrington & Smith, LLP
4 Research Drive
Shelton, CT 06484-6212
203-925-9400

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